

# MEMO ENDORSED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

-against-

TOURO COLLEGE,

Defendant.  
-----X

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/23/08

CONSENT DECREE

## **PART I GENERAL PROVISIONS**

### **Section 101 Introduction**

Plaintiff Equal Employment Opportunity Commission ("EEOC") and Defendant Touro College have agreed to resolve this action by the terms of this Consent Decree ("Decree") as set forth below. On August 31, 2007, EEOC brought this action under Title VII of the Civil Rights Act of 1964, as amended, ("Title VII") to correct unlawful employment practices on the basis of sex and retaliation and to provide appropriate relief to Irena Naco, who was adversely affected by such practices. EEOC alleged in its Complaint that Touro College sexually harassed Irena Naco because of her sex and terminated her in retaliation for engaging in protected activity.

### **Section 102 Purpose of the Decree**

A. The parties, defined as EEOC and Touro College, desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors, assigns, subsidiaries, affiliates, any other corporation or other entity that acquires Touro College, and any other corporation or other entity into which Touro College may merge or with which Touro College may consolidate. The parties settle this action to avoid the burden and expense of further litigation and the execution of this Consent Decree is not intended and shall not be construed as an admission of liability by Touro College.

B. The Decree resolves all issues relating to the allegations in EEOC's Complaint and Irena Naco's EEOC Charge of Discrimination number 520-2006-00410 which served as the jurisdictional prerequisite in this case. The Decree does not resolve any charge of discrimination currently pending before EEOC, or any charge that may be filed in the future, other than the charge listed above. EEOC reserves all rights to proceed regarding matters not covered in this Decree.

C. The terms of this Decree represent the full and complete agreement of the parties. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

**Section 103 Prohibited Conduct and Injunction to Not Discriminate**

A. Touro College, successors, assigns, purchasers, and managers, officers and agents acting on behalf of Touro College are hereby enjoined from discriminating against any individual because of the individual's sex and from retaliating against any individual because that individual is a beneficiary of this Decree, has filed a complaint, or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

B. Nothing in this Decree will be construed to limit or reduce Touro College's obligations to comply with the statutes enforced by EEOC: Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*; Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*; Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and; Equal Pay Act, 29 U.S.C. §206(d).

**Section 104 Consent to Jurisdiction**

A. EEOC and Touro College agree that this Court has jurisdiction over the subject matter of this litigation and the parties, that venue is proper, and all administrative prerequisites have been met. No party will contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

B. The Court will retain jurisdiction over this action for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. The matter may be administratively closed but will not be dismissed. Within thirty (30) days after the date set for the expiration of the decree, the parties will submit a stipulation of

dismissal to the court. In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate, including, but not limited to, specific performance and/or extension of the Decree beyond the three (3) year term.

**Section 105 Applicability of Decree to Successors and Assigns and Upon Purchase, Merger or Consolidation**

Touro College will provide notice and a copy of this Decree to any successors, assigns, subsidiaries, affiliates, any other corporation or other entity that acquires Touro College, and any other corporation or other entity into which Touro College may merge or with which Touro College may consolidate. The successors, assigns, acquiring entities, and any surviving entities upon merger or consolidation will be fully liable for complying with the terms of the Decree. Touro College will provide written notice to EEOC within ten (10) days of any assignment, succession, acquisition, merger or consolidation affecting Touro College.

**Section 106 Implementation of the Decree**

Touro College agrees to take all steps that may be necessary to fully effectuate the terms of this Decree.

**Section 107 Amendments to the Decree**

By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing, approved by all parties to this Decree, and approved or ordered by the Court.

**Section 108 Duration of the Decree**

A. The Decree will remain in effect for three (3) years from the final approval date of the Decree. The effective date of the Decree will be the date it is signed by and receives final approval

from the Court. The Decree will not expire against any signatory while any enforcement action is pending against that signatory.

B. If EEOC has notified Touro College in writing not less than fifteen (15) days in advance of the termination of the Decree that Touro College is not in compliance with any sections of the Decree, Touro College's obligations under the Decree will remain in effect until EEOC determines that Touro College is in compliance.

#### **Section 109 Severability**

If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following will apply to insure that the Decree continues to effectuate the intent of the parties. The provisions of this Decree which are not rendered unlawful, unenforceable, or incapable of performance as a result of such legislative act or court decision will remain in full force and effect and the parties' responsibilities will not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

#### **Section 110 Breach of Decree**

A breach of any term of this Decree by Touro College will be deemed a material and substantive breach of the Decree. Nothing in this Decree will be construed to preclude EEOC from bringing proceedings to enforce this Decree if Touro College fails to perform any of the terms contained herein. If EEOC believes that Touro College has breached any obligation under Sections 201-204 of this Decree, it will provide Touro College a five day period in which to cure the breach before it seeks court intervention. This Decree will be construed under applicable federal law.

## **Section 111 Notices**

Except as otherwise provided for in this Decree, all notifications, reports, and communications to the parties required under this Decree will be made in writing and will be sufficient as hand-delivered, faxed, or sent by certified, registered, or overnight mail to the following persons (or their designated successors):

For EEOC:                      Konrad Batog  
                                        Equal Employment Opportunity Commission  
                                        33 Whitehall Street, 5<sup>th</sup> Floor  
                                        New York, New York 10004  
                                        Fax: (212) 336-3623

For Touro College:        Mr. Alan Schoor  
                                        Senior Vice President-Administration and Operations  
                                        Touro College  
                                        27 West 23<sup>rd</sup> Street  
                                        New York, NY 10010  
                                        Fax: (212) 627-9047

Any party may change such addresses by written notice to the other parties that set forth a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the parties may, after agreement memorialized in writing, send each other such notifications, reports, and communications by email.

## **PART II        SYSTEMIC RELIEF**

### **Section 201 Posting and Distribution of Notices**

#### **A.        Posting of Notice of Resolution**

Within ten (10) days of entry of this Decree, Touro College will conspicuously post and maintain a Notice of Resolutions regarding this lawsuit (attached as Exhibit A) in all prominent places where



employee notices are posted. Touro College will certify to EEOC within ten (10) days after it has posted the Notice of Resolution pursuant to this provision.

**B. Provision of Notice and Memo to Employees**

1. Within sixty (60) days of entry of this Decree, Touro College will provide a copy of the Notice of Resolution (Exhibit A) and a memo setting forth the requirements of Title VII (attached as Exhibit B), to all employees simultaneously with the employees' paychecks. Touro College will certify to EEOC within ten (10) days after it has distributed the Notice of Resolution and memo pursuant to this provision.

2. Beginning ten (10) days after entry of this Decree, Touro College will provide the same Notice of Resolution (Exhibit A) and memo (Exhibit B) to all future employees at the commencement of their employment. On a semi-annual basis beginning six months after the effective date of the Decree, Touro College will certify to EEOC that it has distributed the Notice of Resolution and memo pursuant to this provision.

**Posting of EEO Posters**

Touro College will post and maintain EEO posters in places visually accessible to all applicants and employees of Touro College as required by federal regulations. Touro College will certify to EEOC within ten (10) days that it has posted EEO posters pursuant to this provision.

**Section 202 Non-Discrimination Policy and Complaint Procedures**

**A. Required Content of Non-Discrimination Policies and Procedures**

Touro College will adopt the anti-discrimination policy and complaint procedure (Policies and Procedures), attached hereto as Exhibit C.

**B. EEOC Approval of Non-Discrimination Policies and Procedures**

Under no circumstances will EEOC, by commenting or electing not to comment on Touro College's Policies and Procedures, be deemed to have waived its right to investigate or litigate any alleged violation of federal law enforced by EEOC, related to or resulting from the implementation of any such policy.

**C. Issuance of Policies and Procedures**

1. Touro College will distribute to each employee a copy of Exhibit C within ten (10) days of entry of the Decree. The Policies and Procedures will be issued with a letter signed by the President for Touro College affirming Touro College's commitment to maintaining a work environment free of discrimination.

2. Touro College will include its updated Policies and Procedures in its Employee Handbook and will make the Policies and Procedures available on any company website that makes other human resources information or policies available to employees.

3. Touro College will provide all new employees with copies of the Policies and Procedures within five (5) days of the commencement of their employment.

**D. Modification of Policies and Procedures**

If Touro College wishes to modify its Policies and Procedures concerning discrimination during the term of the Decree, it will do so only after submitting the modified Policies and Procedures to EEOC for review and after receiving EEOC's comments regarding the modified Policies and Procedures in writing.

**Section 203 Training**

**A. Initial Training**

**1. Approval by EEOC**



Touro College will provide training programs for all of its (a) non-supervisory employees, (b) supervisory and management employees, and (c) human resource employees. Each training program will include the following: (a) a detailed agenda with proposed training materials, (b) curricula vitae(s) for the individual(s) who will conduct the training, and (c) a plan to ensure that all employees receive the required training. The training programs will be provided by Workplace Answers. The agendas for the training programs, attached hereto as Exhibit D, have been reviewed by EEOC.

**2. Content and Duration of the Initial Training**

The initial training will review the rights and responsibilities of employees under federal anti-discrimination laws and how such laws define unlawful discrimination. The training will include examples of unlawful conduct. The training also will cover Touro College's anti-discrimination policies and procedures with particular emphasis on the internal complaint, investigation, and remediation process, the prohibition of retaliation, and an employee's right to file with EEOC and state or local agencies. The training will be at least two (2) hours in duration for non-supervisory employees and supervisory and management employees and at least six (6) hours in duration for human resources employees.

**3. Scheduling and Confirmation of Training**

Within thirty (30) days of entry of this Decree, Touro College will initiate the initial training programs and all such initial training programs will be completed within ninety (90) days of entry of this Decree. All non-supervisory employees, supervisory and management employees, and human resource employees will attend the appropriate initial training session. Within ten (10) business days of the completion of the initial training program, Touro College will provide EEOC with

a report that includes the names of those who took the training, the date each person took the training, and any names of employees who did not take the training, with the reason that the training was not taken.

**B. Annual Training**

**1. Annual Training for Non-supervisory Employees**

On an annual basis, Touro College will provide all non-supervisory employees with at least one (1) hour of EEO training as described below in sub-paragraph 4.

**2. Annual Training for Management and Supervisory Employees**

On an annual basis, Touro College will provide all supervisory and management employees with at least one (1) hour of EEO training as described below in sub-paragraph 4.

**3. Annual Training for Human Resources Employees**

On an annual basis, Touro College will provide all human resource employees with at least six (6) hours of EEO training as described below in sub-paragraph 4.

**4. Required Subjects of Annual Training**

The annual training programs will include:

a. For non-supervisory, supervisory and management, and human resources employees, instruction on the requirements of all applicable equal employment opportunity laws including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Equal Pay Act, and a review of Touro College's non-discrimination policies and procedures with particular emphasis on the complaint procedure and the prohibition of retaliation.

b. For supervisory, management and human resources employees, instruction on any policies and requirements related to this Decree and instruction on the specific requirements of this Decree and the proper procedures for responding to complaints of discrimination or harassment.

**C. Training for New Employees**

1. Touro College will provide two (2) hours of training for all new non-supervisory employees, three (3) hours of training for all new management/supervisory employees, and six (6) hours of training for all new human resource employees within sixty (60) days of the commencement of their employment. The training will review the rights and responsibilities of employees under federal anti-discrimination laws and how such laws define unlawful discrimination. The training will include examples of unlawful conduct. The training also will cover Touro College's anti-discrimination policies and procedures with particular emphasis on the internal complaint, investigation, and remediation process and an employee's right to file with EEOC and state or local agencies. The training also will cover the requirements of this Decree.

**D. Reporting Requirements for Training**

In connection with the training conducted on an annual basis, Touro College shall report quarterly to the EEOC providing a certification of completion of training that includes the names of those who took the training, the date each person took the training, and any names of employees who did not take the training, with the reason that the training was not taken.

**Section 204 Monitoring and Reporting**

**A. Monitoring by EEOC**

EEOC may monitor Touro College's compliance with the Decree through the inspection of Touro College's premises and records, and interviews with Touro College's officers, agents, employees, and contractors at reasonable times. Touro College will make available for inspection and copying any records reasonably related to the Decree upon reasonable notice by EEOC.

**B. Reporting Requirements for Discrimination Complaints**

Every six (6) months beginning thirty (30) days after entry of this Decree, Touro College will provide a written report to EEOC with information regarding any verbal or written complaints of discrimination from employees or applicants applying for positions which were received during the preceding six (6) months. The report will include the name of the complainant, the name of the alleged harasser or discriminator, a list of each step taken by Touro College during the investigation, a summary of the complaint, the location, the results of any investigation of the complaint, and any remedial action taken by Touro College. The report will include all open complaints and all complaints closed or resolved within the prior six (6) months.

**Section 205 Compliance with Record-keeping Requirements**

Touro College agrees to maintain such records as are necessary to demonstrate its compliance with the Decree and 29 C.F.R. '1602 *et seq.* and to verify that the reports submitted pursuant to the Decree are accurate.

**PART III MONETARY AND OTHER RELIEF**

**Section 301 Monetary Payment to Irena Naco**

A. Within ten (10) days of entry of this Decree and the entry of the settlement agreement with Intervenor, Touro College will pay the total gross sum of Four Hundred and Fifteen Thousand

and no/cents dollars (\$415,000.00) on the terms provided for below and as per the settlement agreement with the Intervenor:

1. Touro College will pay Irena Naco the total sum of three hundred forty thousand dollars (\$340,000.00) as non pecuniary compensatory damages, one hundred forty thousand (\$140,000.00) of which shall be paid to Irena Naco's counsel . Within ten (10) days of entry of this Decree and the entry of the settlement agreement with Intervenor, Touro College will provide Irena Naco, through her attorney and her attorney, IRS FORMS 1099. Touro College will send the checks and IRS FORMS 1099 via certified mail, return receipt requested, to Irena Naco's attorney Copies of the checks will be forwarded to EEOC immediately upon issuance of the check.

2. Touro College will pay Irena Naco the total sum of seventy fifty thousand dollars (\$75,000), less lawful deductions, as back wages and provide Irena Naco an IRS W-2 FORM. Touro College will send the check and IRS W-2 FORM, via certified mail, return receipt requested, to Irena Naco's attorney. A copy of the check will be forwarded to EEOC immediately upon issuance of the check.

### **Section 302 References Provided for Irena Naco**

Touro College agrees to answer any and all inquiries by prospective employers regarding Irena Naco by informing the prospective employer only of her dates of employment, title(s) and salary and nothing more. Touro College will not mention this action, or any other matter related to this action or the underlying charge of discrimination to prospective employers inquiring about Irena Naco.

### **Section 303 Prohibition against Hiring of Stanley L. Kantor**


Touro College will not hire Stanley L. Kantor for any position.

**PART IV SIGNATURES**

Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

APPROVED IN FORM AND CONTENT:

By Plaintiff EEOC:



Elizabeth Grossman  
Regional Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, New York, 10004

For Defendant Touro College:



Dr. Bernard Lander  
President  
Touro College  
27 West 23<sup>rd</sup> Street  
New York, NY 10010

SO ORDERED this 23<sup>d</sup> day of September 2008.



United States District Judge  
DENNY CHIN



**EXHIBIT A**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY. 10004-2112  
(212) 336-3620  
TTY (212) 336-3622  
General FAX (212) 336-3625

**NOTICE TO ALL EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission ("EEOC") against Touro College in federal court in the Southern District of New York. In its lawsuit, EEOC alleged that Touro College discriminated against a female employee by sexually harassing her and terminating her in retaliation for complaining about the sexual harassment.

Federal law prohibits employers from discriminating against applicants and employees based on national origin, religion, race, color, sex, age or disability. Touro College, its managers, officers, and agents will henceforth support and comply with Federal law prohibiting discrimination against any employee or applicant for employment because of an individual's sex with respect to hiring, firing, compensation, or other terms, conditions, or privileges of employment.

Pursuant to the Consent Decree, Touro College will:

1. Not engage in any unlawful employment discrimination or retaliation against any person who exercises his or her rights under federal anti-discrimination laws;
2. Maintain and distribute written policies and procedures prohibiting discrimination and enabling employees to file discrimination complaints;
3. Provide training on federal laws prohibiting employment discrimination to all current and future employees;
4. Permit EEOC to monitor compliance with the Consent Decree;
5. Provide EEOC periodic reports on its internal complaints of discrimination;
6. Distribute this Notice; and
7. Pay money damages to the person who was subject to discrimination.

Should you have any complaints or questions regarding employment discrimination, contact the EEOC at:

Equal Employment Opportunity Commission  
(800) 669-4000  
Website: [www.eeoc.gov](http://www.eeoc.gov)

Dated: \_\_\_\_\_

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE ALTERED OR DEFACED BY ANYONE OR  
COVERED BY ANY OTHER MATERIAL**

This Notice must remain posted for three (3) years from the date shown above and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the U.S. Equal Employment Opportunity Commission at the numbers listed above.

**EXHIBIT B**

**[Touro College Letterhead]**

TO: All Employees

FROM: **[President]**

DATE: **[Within ten (10) days of entry of the Decrec]**

RE: Protections Provided by Federal Anti-Discrimination Laws

This memo is being sent to all employees pursuant to a Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission ("EEOC") against Touro College. The lawsuit concerned the sexual harassment and retaliatory termination of a female employee. EEOC and Touro College entered into a Consent Decree in resolution of the lawsuit.

The purpose of this memo is to inform all employees of their rights under federal anti-discrimination laws. Touro College is fully committed to complying with these laws and to providing a work environment free of discrimination and harassment.

The primary federal laws that prohibit employment discrimination are Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. They prohibit discrimination and harassment based on:

- race
- color
- national origin
- religion
- disability
- age
- sex (including pregnancy)

The law prohibits discrimination based on the above categories regarding any aspect of employment including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;

- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

The same laws also prohibit:

- harassment - unwelcome and offensive conduct based on the protected categories set forth above;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

The laws require employers to reasonably accommodate:

- the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship; and
- a qualified individual with a disability unless doing so would impose an undue hardship.

If you believe you have been subject to unlawful harassment or discrimination, or if you have witnessed unlawful harassment or discrimination, please report it in accordance with the procedures contained in the company's non-discrimination policies so that the company may promptly investigate and remedy the discrimination.

You also may file a complaint with the Equal Employment Opportunity Commission ("EEOC"), which is the federal agency responsible for enforcing federal anti-discrimination laws. The EEOC can be reached at (800) 669-4000 ([www.eeoc.gov](http://www.eeoc.gov)).